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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC,
RELIGIOUS AND LINGUISTIC MINORITIES

Written statement submitted by the Andean Commission of Jurists,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

INDIGENOUS PEOPLES IN THE ANDEAN REGION

1. The Andean Commission of Jurists, a non-governmental organization of the Andean region, considers the declaration of 1993 as the "International Year for the World's Indigenous People" to be particularly important and welcomes the special ceremony held during the recent celebration of Human Rights Day as a sign of what the World Conference on Human Rights to be held in Vienna in June 1993 will be, namely, a new forum for the discussion of the rights of the world's indigenous peoples.

2. Indigenous peoples account for an average of 30 per cent of the population of the countries of the Andean region. In 1990, over 20 million inhabitants of the region were in that situation: in Bolivia, 71 per cent of the population is indigenous, in Peru, 47 per cent and, in Ecuador, 43 per cent. These three countries together have an indigenous population which accounts for more than 50 per cent of their combined total populations. According to the same estimates, there are 1 million indigenous persons in Chile, 600,000 in Colombia and 400,000 in Venezuela. The concept of

minorities that is used in the United Nations is thus entirely relative compared to the actual situation of the indigenous peoples of the Andean region, where 17.3 million live in the Andes and 2.7 million are settled in the Amazon.

3. Indigenous peoples are present not only in the rural, farming and forestry sectors that are associated socially and economically with greater poverty and a lower standard of living, but also in the main cities, where their potential for hard work and their cultural activities keep them under constant threat owing to the distortions and violence of political, economic and social life. In view of this situation, the process of recognizing the indigenous peoples' worth must not be left to depend on the good will of Governments.

4. Efforts have to be made to determine and define what is meant by the term "indigenous", which must be distinguished from the term "ethnic minority" (the subject-matter of the work of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) with a view to promoting a special permanent regime based on their cultural and social characteristics. We are advocating this because it is required by the population's level of development and its relationship to the domestic market. Ethnic and cultural configurations have nevertheless been strengthened and indigenous organizations were consolidated when recognition of their rights was made a prerequisite for their physical and spiritual existence.

5. Existing national models are in crisis and have outgrown their institutions because they have not recognized unity within diversity. There has to be a change from the prevailing normative and factual framework of attitudes and practices on which the organization of States is now based to systems that genuinely guarantee participation in the solution of the problems affecting them.

6. The promotion and consolidation of the trends that form the core of the claims of the indigenous peoples of the Andean region, whether in the Andes or in the Amazon, may well start with the ratification of International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In our view, States must confirm these assumptions in the following areas of their relationship with indigenous peoples:

(a) Constitutional recognition of their existence as specific subjects within each State; recognition of the collective rights to which they are specifically entitled; establishment of the obligations of States and Governments to guarantee the exercise of these rights by drafting and adopting the relevant legislation through recognition of the right of peoples to the physical and cultural means for their reproduction and growth; the right to land and territory and sharing the benefits of the development of natural resources, through guarantees of an individual and collective land ownership system. What indigenous peoples are claiming is not territorial secession, but autonomy, which will guarantee them their right to material and social development that is to be promoted directly and responsibly by their organizations and technical experts, with the necessary support from the State;

(b) The creation of legal and political conditions within State institutions, thus establishing communication through direct representation in order to secure the historical achievements that are being threatened by policies of a definitely liberal stripe; efforts to legitimate their own forms of authority and representation in various spheres of political and social activity in order to strengthen their right to their own culture and its development. This means changing educational models by including their technological and medicinal contributions, as well as their experience of production and nature conservation, as in the Convention on Biological Diversity, which is the result of the negotiations at the United Nations Conference on Environment and Development and the approved text of which is in the process of being ratified;

(c) Organizations of indigenous peoples must be recognized, as must their ability to establish a dialogue with the State, businesses and professional associations. In this way, their political participation in the direct management of their development proposals will be broadened, as will their potential to make a social contribution to the building of States and institutions suited to each particular situation. Otherwise, despite the existence of formal constitutional and democratic regimes, the stability required by any truly democratic State subject to the rule of law will not be achieved.

7. Measures must be taken to ensure that, in the countries of the region, promising developments in these areas actually take shape. Examples of recognition of the existence of this cultural, social and legal plurality include the 1991 Constitution of Colombia, which "recognizes and protects the ethnic and cultural diversity of the Colombian nation"; the commendable effort made by the Government of Chile in establishing the Special Commission on Indigenous Peoples (CEPI) and sponsoring an indigenous bill and a draft constitutional amendment. The Government of Bolivia has also followed this trend by ratifying ILO Convention No. 169, thereby making it easier to amend its relevant legislation, for, as in Ecuador, major indigenous mobilizations have been calling for new treatment and consideration of their rights also based, on proposed legislative and constitutional amendments.

8. The establishment of a Special Indigenous Prosecutor's Office in Venezuela is a positive step and forms part of an open period of discussion in which the indigenous movement drafted a proposed constitutional amendment which has been and is still under consideration by the Venezuelan Parliament. In Peru, proposed amendments and basic changes have been hampered by the crisis that affects the country and the ratification of ILO Convention No. 169 has been pending in the Council of Ministers since May 1992.

9. Attention is also drawn to normative proposals that have been made at the regional and international levels. The Draft Universal Declaration on Indigenous Peoples, which has been entrusted to the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the regional instrument of a similar nature that is being prepared by the Organization of American States cannot be drafted without considerable indigenous participation, much less rescind already recognized rights. In addition to these international efforts, there are those aimed at the sustainable development of indigenous peoples, such as

the Indigenous Fund and the Convention on Biological Diversity. All these efforts must be fully guaranteed because there are threats against acquired rights and even those historically claimed by the indigenous peoples.

10. There are also regional development plans in connection with various State legislative policies that are genuine opportunities for sales of land and natural resources. Many of these proposals disregard rights acquired by the different indigenous communities. "Eminent domain" is invoked for this purpose and priority is given to mining and transnational macroprojects, as though land occupied by indigenous peoples was "no man's land". There are political and territorial measures that will not change the basic problems, which are not taken into account by development projects and include soil degradation and wasted or polluted fresh water reserves and sources.

11. The fact that indigenous peoples have so far not been able to take part in the formulation of the policies and provisions that apply to them and, consequently, in the solution of the problems that affect them is an obvious violation of the right to participation to which they are entitled not only as individuals, but also as peoples, bearing in mind, in the latter case, the limits set by international law for the purpose of guaranteeing the integrity of States.

12. It must also be pointed out that, in countries affected by serious political violence, such as Colombia and Peru, indigenous peoples are one of the sectors most affected by the violence because of their social marginalization and the fact that they usually live in areas where subversive groups and drug traffickers focus their activities.

13. Of particular concern is the case of the Ashaninka people in Peru, which is constantly being harassed by Sendero Luminoso (Shining Path), which has killed hundreds of members of this ethnic group and forced them to abandon their land and take refuge in improvised camps where they not only live in extreme poverty, but also have to cope with the problem of being uprooted from their traditional way of life.

14. The constant struggle of indigenous peoples to defend their rights and preserve their cultural identity was given well-deserved recognition when the Nobel Peace Prize was awarded to Rigoberta Menchú, a Quiché Indian from Guatemala. That was also an appeal to the international conscience concerning the responsibility of all for the realization of the fundamental rights of indigenous peoples.